



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR - 5 2019

OFFICE OF WATER

MEMORANDUM

SUBJECT: Justification for Non-Competitive Exemption Under Section 6.c.6 of the Assistance Agreement Competition Policy for Awards to State and Tribal Agencies for Drinking Water Grants Authorized by Section 1464(d) of the Safe Drinking Water Act

FROM: David P. Ross
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DP Ross

THRU: Bruce Binder, Senior Associate Director for Grants Competition
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Denise A. Polk, Director
Office of Grants and Debarment

Denise A. Polk
4/10/19
[Signature] 4/10/19

TO: Donna J. Vizian, Principal Deputy Assistant Administrator
Office of Mission Support

The Office of Water (OW) requests an exemption from competition under section 6.c.6 of the Agency's Assistance Agreement Competition Policy (EPA Order 5700.5A1) to award assistance agreements on a non-competitive basis to eligible state¹ and tribal agencies to support drinking water grants authorized by section 1464(d) of the Safe Drinking Water Act (SDWA), as amended by section 2107 of the Water Infrastructure Improvements for the Nation (WIIN) Act and section 2006 of the America's Water Infrastructure Act (AWIA).

Background

The SDWA is the key federal law for protecting the public from harmful contaminants in drinking water. First enacted in 1974, and substantially amended in 1986, 1996, 2002, 2016, and 2018, the SDWA is administered through programs that establish standards and treatment requirements for public water systems, finance drinking water infrastructure projects, promote water system compliance, and control the underground injection of fluids to protect underground sources of drinking water.

¹ For the purposes of this memorandum, the term "state" includes states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marianas.

The WIIN Act, enacted December 16, 2016, contained several amendments to the SDWA, including authorizing a new drinking water grant program for voluntary testing for lead contamination in drinking water at schools and child care programs² under section 1464(d) of the SDWA.

The AWIA, enacted October 23, 2018, further amended this new grant program to require that funds awarded under section 1464(d) give priority to assist in voluntary testing for lead contamination in drinking water at schools that are in low-income areas.

Competition Is Not in the Public Interest

The statutory language does not specify a formula for the distribution of the grant funding. The OW plans to allocate the funding using a formula based on the following factors: population of children, number of schools, number of students eligible for free and reduced lunch, and lead exposure risk, as indicated by state data on drinking water lead action level exceedances and the number of children entering Head Start programs that received referrals to medical professionals after blood lead testing. The award recipients will be states and tribal education agencies. Recipients will assist schools in voluntary testing for lead in drinking water.

The OW believes that it is in the public interest to approve this exemption for the reasons below and to award the grants non-competitively.

- The OW believes that Congress intended for these grants to be awarded non-competitively.
 - Section 1464(d) of the SDWA directs the EPA to “*establish a voluntary school and child care program lead testing grant program to make grants available to States to assist local educational agencies in voluntary testing for lead contamination in drinking water at schools and child care programs under the jurisdiction of the local educational agencies.*” In structuring this program as direct grants to states, the EPA believes that the Congress intended this grant program to support lead testing in schools nationwide.
 - The statute also gives the EPA authority to make the grant directly available to any local educational agency located in a state that does not participate in the voluntary grant program or to any tribal education agency. All 50 states and the District of Columbia have indicated that they will participate in the grant program, so the EPA will use this statutory authority to make the grant directly available to tribal education agencies.
 - As required under the Appropriations Act of 2018, the EPA briefed Congressional staff on the grant program prior to announcing the grant. The EPA presented a non-competitive approach to award the funding based on the Agency’s best understanding of Congressional intent for grant implementation, and the Congressional staff agreed with this approach.
- Lead in drinking water in schools is a challenge for schools throughout the country. To equitably protect public health, each state must establish a program to support schools in testing for lead in drinking water. A competitive process would result in an inequitable distribution of funding for implementation, possibly only reaching a fraction of the schools that are at risk for lead in

² For the purposes of this memorandum, the term “schools” includes child care programs, preschools, elementary schools, and secondary/high schools.

drinking water. By implementing the grant funding through the states using an allocation formula, the grant funds will be better positioned to reach all schools equivalently, based on state assessment and need. This approach is also key to meeting the statutory requirement that disadvantaged communities receive priority under this program. Competition between the states could result in the opposite outcome – the unintentional exclusion of some disadvantaged communities.

- Congress appropriated State and Tribal Assistance Grant (STAG) funds for the implementation of this grant program, and such funds are typically awarded non-competitively. STAG funds are integral to the EPA's cooperative partnerships with states and tribes in protecting America's drinking water. This grant supports these efforts in schools.
- The principal objective of the assistance to be awarded under section 1464(d) of the SDWA is specific – to provide grants to states and tribes for the testing for lead contamination in drinking water in schools, including making the results publicly available. The funding is a designated amount of money available for a restricted purpose to be administered by a designated entity. If a competitive grant process were used, there would not be meaningful differences between applicants, providing no basis for competitive selection.
- The non-competitive funding approach has the potential to reach a broader scope of schools. Currently, there is a very wide range of state activities and programs related to testing for lead in drinking water at schools. Some states have state laws, policies, or guidelines. Other states do not have any type of program. Congress' intent was for funding to be available to all states. A non-competitive allocation of funding would permit each state to establish or enhance programs, allowing the states to streamline implementation and reach the most vulnerable populations. For tribal education agencies, competition would be an unreasonable burden, especially given the very small amount of funding that each tribal education agency would need, in many cases, only a few thousand dollars or less. A non-competitive process would allow the EPA to support a wider distribution of tribal education agencies. The impact of a non-competitive grant process with a consistent approach across all states and tribes would be that more schools would be served.
- There is no national program for testing lead in drinking water in schools. Each state will need to develop a new program or expand an existing program using criteria present in the SDWA. Under section 1464(d) of the SDWA, the statute requires that grant funds be expended in accordance with the *3Ts for Reducing Lead in Drinking Water in Schools: Revised Technical Guidance* or applicable state regulations or guidance that are not less stringent.
 - To provide a national view of lead in school drinking water, it is imperative to follow similar guidelines to support effective testing. Implementing the grant through a non-competitive process encourages greater state and tribal participation in the program, which will lead to a more robust nationwide effort to identify potential sources of lead in drinking water in schools, resulting in greater protection of public health across the country.
- The EPA recognizes that states and tribes may not be able to test all school facilities through this grant program; as such, the Agency guidance for this grant program will recommend prioritizing

those facilities where children may be more vulnerable to lead exposure. Grantees will prioritize providing funding to local educational agencies based on the following criteria:

- schools in underserved and/or low-income communities;
- elementary and child care facilities that primarily care for children six and under; and
- older facilities that are more likely to contain lead plumbing.

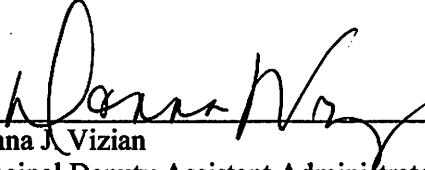
Conclusion

The OW concludes that an exemption from the Assistance Agreement Competition Policy is warranted for the grant programs authorized by section 1464(d) of the SDWA. The OW requests approval of this exemption for awards made under the SDWA 1464(d) to assist schools and child care programs to test for lead contamination in drinking water. The OW also requests that this exemption be effective through September 30, 2030. At that time, we will re-evaluate the need for this exemption.

SIGNATURE DOCUMENT

Approval of the Justification for Non-Competitive Exemption Under Section 6.c.6 of the Assistance Agreement Competition Policy for Awards to State and Tribal Agencies for Drinking Water Grants Authorized by 1464(d) of the Safe Drinking Water Act.

The undersigned hereby approves the non-competitive exemption from the Assistance Agreement Competition Policy for drinking water grants authorized by 1464(d) of the Safe Drinking Water Act.



Donna J. Vizian
Principal Deputy Assistant Administrator
Office of Mission Support

4/17/15
Date